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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,346	08/23/2006	Jeffrey P. Reistroffer		9676

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Jeffrey P. Reistroffer
PO Box 728
Plains, MT 59859-0728

EXAMINER

JOHNSON, STEPHEN

ART UNIT	PAPER NUMBER
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3641

MAIL DATE	DELIVERY MODE
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03/26/2012

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/597,346	REISTROFFER, JEFFREY P.	
	Examiner	Art Unit	
	STEPHEN M. JOHNSON	3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2012.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1, 13-18, 26, 35, 36, 44, 47, 49 and 76 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☒ Claim(s) 76 is/are allowed.
- 7) ☒ Claim(s) 1, 13-18, 26, 35, 36, 44, 47 and 49 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☒ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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1. This Office action is in response to the RCE as filed on 01/10/2012. Claims 1, 13-18, 26, 35-36, 44, 47, 49, and 76 remain active in this application and an action on these claims follows. Claims 2-12, 19-25, 27-34, 37-43, 45-46, 48, and 50-75 have been cancelled.

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1, 13-18, 26, 35-36, 44, 47, and 49 are rejected under 35 U.S.C. 112, first paragraph, as **failing to comply with the written description requirement**. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Use of the terminology “kindling bodies” throughout the claim language is unsupported by the application as originally filed. Further, the application as originally filed does not provide a definition of the terminology “kindling bodies”. Further, in the application as originally filed, no specific grouping of materials (see claim 1 and the list of items after the terminology "the group consisting of") is recited as being associated with the terminology “kindling bodies”. Applicant’s arguments sections provides definition for the terminology “kindling” (via Merriam-Webster and the dictionary.com) but these definitions are not included in the application as originally filed and are broader in scope than the inclusion of kindling bodies as claimed in claim 1. Further, these are only two possible definitions for the terminology “kindling” of the many different possible definitions dependent upon what particular definition is selected after the initial filing. In claim 1, line 16, applicant uses the terminology “thermoplastic polymer”. This terminology is broader

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in scope than the terminology “polyethylene”, “polypropylene”, “poly-isoprene”, and “poly-butadiene” (see page 11 of the application as originally filed) used at initial filing.

4. Claims 1, 13-18, 26, 35-36, 44, 47, and 49 are rejected under 35 U.S.C. 112, first paragraph, as **failing to comply with the enablement requirement**. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Use of the terminology “kindling bodies” throughout the claim language is unsupported by the application as originally filed. Further, the application as originally filed does not provide a definition of the terminology “kindling bodies”. Further, in the application as originally filed, no specific grouping of materials (see claim 1 and the list of items after the terminology “the group consisting of”) is recited as being associated with the terminology “kindling bodies”. Applicant’s arguments sections provides definition for the terminology “kindling” (via Merriam-Webster and the dictionary.com) but these definitions are not included in the application as originally filed and are broader in scope than the inclusion of kindling bodies as claimed in claim 1. Further, these are only two possible definitions for the terminology “kindling” of the many different possible definitions dependent upon what particular definition is selected after the initial filing. In claim 1, line 16, applicant uses the terminology “thermoplastic polymer”. This terminology is broader in scope than the terminology “polyethylene”, “polypropylene”, “poly-isoprene”, and “poly-butadiene” (see page 11 of the application as originally filed) used at initial filing..

5. The amendment filed on 01/10/2012 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall

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introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Addition of the terminology kindling material and/or kindling bodies in paragraphs [0035], [0040], [0047], [0050], [0053], [0055], [0056], [0058], [0059], [0061], [0062], and [0063] is considered to be new matter. This terminology is neither included or defined in the application as originally filed. Further, the inclusion of the terminology while similar to some of the materials disclosed at originally filing (see page 11 of the application as originally filed) is not equivalent in scope and therefore must be considered new matter.

Applicant is required to cancel the new matter in the reply to this Office Action.

6. Claims 1, 13-18, 26, 35-36, 44, 47, and 49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 16-17, it is not understood as to how "latex rubbers"; "gelled hydrocarbons"; "thermoplastic polymers"; and "silicon rubber" are materials that are commonly used to start fires. Consequently, these materials would not qualify as "kindling bodies" (see applicant's argued definition of the term "kindling"). Please clarify.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 13-15, 35-36, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Posson (4,220,087) in view of Richardson et al. (3,712,222).

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9. Posson (087) discloses a prolonged burning incendiary strand comprising:
- a) a stand body (cord) of indeterminate length; 17
 - b) at least one solid fuel component; 18 or 23 or 26 or 42 or 68;
col. 2, lines 11-21
 - c) the fuel component being able to undergo self-sustained inherent ignition;
 - d) flames emitted from the exterior surface of the strand; abstract, col. 4, lines 13-21
 - e) axial ignition means for initiating combustion of the 19 or 23; col. 4, lines 1-6
fuel component; and
 - f) flaming composition from ten seconds to five minutes. col. 4, lines 6-12

Posson (087) applies as recited above. However, undisclosed is a fuel material that is a thermoplastic polymer (kindling body). Richardson et al. (222) teach a fuel material that is a thermoplastic polymer (kindling body) (col. 4, lines 62-68). Applicant is substituting one fuel material for another in an analogous art setting as explicitly encouraged by the secondary reference (see col. 4, lines 62-68 of Richardson et al.) with expected or predictable results (see *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 406 (2007)). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Richardson et al. to the Posson incendiary strand and have an incendiary strand with a different type of fuel component.

10. Claim 76 is allowed.

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11. Applicant's arguments with respect to claims 1, 13-18, 26, 35-36, 44, 47, and 49 have been considered but are moot because the arguments do not apply to any of the references being used in the current rejection.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. McCaffrey (4,402,270) discloses a state of the art flexible body ignition device.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 571-272-6877 and whose e-mail address is (Stephen.Johnson@uspto.gov). The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The Central FAX phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 800-786-9199.

/Stephen M. Johnson/
Primary Examiner, Art Unit 3641

SMJ
March 22, 2012